

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

3105 Coleman, LLC,

Plaintiff

v.

SMS Financial Strategic Investments, LLC,

Defendant

Case No.: 2:19-cv-00166-JAD-EJY

**Order Granting 3105 Coleman's Motion to
Voluntarily Dismiss**

[ECF No. 27]

Plaintiff 3105 Coleman, LLC moves to voluntarily dismiss its complaint without prejudice under Federal Rule of Civil Procedure 41(a)(2). Defendant SMS Financial Strategic Investment, LLC opposes the motion, requesting that I either (1) dismiss the action with prejudice or (2) dismiss the action without prejudice, but award it \$6,018.50 in attorneys' fees. I dismiss the action without prejudice because SMS has not shown why it should be dismissed with prejudice. And I decline to award SMS attorneys' fees without prejudice to its ability to re-urge the request in a proper form.

Discussion

3105 Coleman filed this suit in the Eighth Judicial District Court for Clark County.¹ SMS removed the case and moved to dismiss it.² I granted SMS's motion in part, leaving only 3105 Coleman's breach-of-contract claim.³ 3105 Coleman now moves to dismiss that claim, arguing that it has been resolved by the "sale of the underlying real property."⁴

Rule 41 vests the district court with discretion to dismiss an action at the plaintiff's

¹ ECF No. 1-1 at 4.

² ECF Nos. 1; 4.

³ ECF Nos. 14; 26.

⁴ ECF No. 27 at 2.

1 urging “upon such terms and conditions as the court deems proper.”⁵ “A district court should
 2 grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it
 3 will suffer some plain legal prejudice as a result.”⁶ Federal district courts have broad discretion
 4 to impose terms and conditions on a voluntary dismissal, including making the dismissal a with-
 5 prejudice one⁷ or requiring payment of attorneys’ fees.⁸ But “the plaintiff [has] the option to
 6 refuse the voluntary dismissal if the conditions imposed are too onerous.”⁹

7 Although SMS nominally requests denial of 3105 Coleman’s motion, SMS offers no
 8 argument that it will suffer “plain legal prejudice” as a result of the dismissal. Rather, SMS’s
 9 two-page opposition asks that I dismiss with prejudice or with attorneys’ fees.¹⁰ I thus interpret
 10 SMS’s conclusory opposition as requesting two conditions on dismissal, and I address each in
 11 turn.

12 SMS argues that dismissal with prejudice is appropriate for the reasons stated “in its
 13 original Motion to Dismiss and Opposition to Motion to Amend the Complaint.”¹¹ But I denied
 14 SMS’s motion to dismiss the original breach-of-contract claim, and SMS has not since presented
 15 new arguments to dismiss it.¹² I will not develop SMS’s new arguments for it. Because SMS

17 ⁵ *Hargis v. Foster*, 312 F.3d 404, 407 (9th Cir. 2002).

18 ⁶ *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).

19 ⁷ *See id.* at 976.

20 ⁸ *Stevedoring Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 921 (9th Cir. 1989).

21 ⁹ *Lau v. Glendora Unified Sch. Dist.*, 792 F.2d 929, 930 (9th Cir. 1986).

22 ¹⁰ *See* ECF No. 29 at 1 (“SMS is not opposed to the action being dismissed with prejudice”), and
 2 (“SMS respectfully requests that the Court deny Plaintiff’s Motion to Dismiss Without
 Prejudice unless it is also awarded the costs and fees”).

23 ¹¹ *Id.* at 1.

¹² In its opposition to 3105 Coleman’s motion for leave to file an amended complaint, SMS
 argued against 3105 Coleman’s *amended* breach-of-contract claim. ECF No. 22 at 4.

1 fails to identify “points and authorities” meriting a with-prejudice dismissal of the remaining
2 claim, I will not dismiss it with prejudice.¹³

3 SMS argues that it should be awarded attorneys’ fees “as the dismissal is a judgment in
4 its favor” and the underlying deed of trust entitles SMS to attorneys’ fees.¹⁴ But it is “also
5 willing to bring a separate motion for attorneys’ fees and costs if preferred by the Court.”¹⁵
6 Because SMS does not explain, for example, the reasonableness of its fees or what authority
7 other than the deed of trust supports an award of attorneys’ fees, I deny its request to impose
8 attorneys’ fees as a condition of dismissal without prejudice to SMS’s ability to re-urge it in a
9 proper form.¹⁶ And because I do not impose any conditions on the dismissal, I need not offer
10 3105 Coleman an opportunity to refuse them.

11 **Conclusion**

12 **IT IS THEREFORE ORDERED** that 3105 Coleman’s motion to voluntarily dismiss
13 without prejudice [ECF No. 27] **is GRANTED**. The CLERK OF COURT is directed to CLOSE
14 THIS CASE.

15 Dated: May 18, 2020

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17 U.S. District Judge Jennifer A. Dorsey
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22 ¹³ See L.R. 7-2(d).

23 ¹⁴ ECF No. 29 at 2.

¹⁵ *Id.* at n.2

¹⁶ See L.R. 54.